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Do Investors Really Manage to Have Secure Land Rights?

Land Deals and Competition Over Land control in Madagascar

Draft version

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Abstract:

Beyond the well-publicised abandonment of Daewoo's gigantic agricultural project, large-scale appropriations continue in Madagascar. Based on case studies, this paper analyses how land deals are partly shaped by the competition for control over land access. The Malagasy legal framework does have the potential to regulate large-scale land acquisitions and protect local land rights protection. But, all these positive-laws are not enforced due to investors' strategies to access to land and competition among state and non-state institutions for control over land resources. To gain access, most investors both engage in formal procedures and establish informal land agreements but they only negotiate with what, for them, are the "most visible" institutions, i.e. positive law institutions. Hence, neither of these two routes ensures tenure security. In view of the material and symbolic resources at stake, state officials generally help them to access land. However, the different state institutions find themselves competing over land control to assert greater authority. These power struggles generally hinder the land deals and take precedence over the respect of the pro-smallholder provisions of the recent land reform. As a consequence, some local landholders resort to violence to defend their rights while the access to land for investors is far from being guaranteed.

Key-words: bundle of powers, conflict, land reform, large-scale land acquisitions, Madagascar

I. INTRODUCTION

One of the main issues raised by large-scale land investments in southern countries concerns resource access and land-use competition, particularly in contexts where local communities' land rights are not legally recognized and most of the country's land is considered as state-owned (Cotula et al., 2009; Gorgen et al., 2009; Von Braun and Meinzen-Dick, 2009; World Bank, 2010). Large-scale land transfers (lease or purchase) risk ignoring and breaching local land access practices and, hence, access to a major source of livelihood.

In Madagascar, beyond the well publicised abandonment of Daewoo's huge agricultural project (targeting 1.3 million hectares of land) large-scale appropriations continue (Andrianirina Ratsialonana, 2011). But, unlike in most other southern countries, a pro-smallholder land reform is ongoing (Teyssier et al., 2010). Since 2005, profound legal changes have recently been implemented in matters of local land rights protection. The 2005

land reform¹ challenges the state-ownership of a large part of the country's land, legally recognizes individual and collective local land rights and gives land management responsibilities to local government (Teyssier et al., 2009).

Analysing the respect of local land rights requires examining of how investors access land and what institutions have control over land access. States play a major role in the establishment of these land deals, notably by authorising land access in exchange for direct or potential economic advantages (Cotula et al., 2009, World Bank, 2010). But the state is not the only institution claiming control over land, and besides, it is far from being a congruent and homogeneous institution. Moreover, in Madagascar, land access is both based on local practices, rules, conventions and on positive laws and, as such, controlled by various state and non-state institutions (Evers, 2002; Le Roy et al., 2006; Aubert et al., 2008, Omrane, 2008; Muttenezerg, 2010).

As is the case in every context of normative and institutional pluralism, social actors and politico-legal institutions (state or other) compete over the access to land resources and over the control of this access (Ribot and Peluso, 2003). Confrontation takes place on two levels (Lund, 2002; Le Meur, 2006): (i) between individuals and groups competing over use and property rights on land and (ii) between power-holders battling to assert the legitimacy of their control over land, and thus their capacity to define and enforce the rules of the game. As a result, in order to analyse large-scale acquisition, one cannot just analyse the 'bundle of rights' on land but must also take into account 'the bundle of powers' relative to control over land (Ribot and Peluso, 2003; Borras and Franco, 2010).

Our paper therefore addresses the following questions: in the Malagasy context, do investors' attempts to obtain large areas of land hinder the enforcement of the land laws and encourage rent-seeking strategies by state and non-state actors? Does competition for authority - among politico-legal institutions and within the state - ease or hinder investors' land access? In this competition for authority, are there institutions that still legitimize and defend the interests of local landholders? And lastly, do local landholders – in their diversity - also have some form of authority over land control?

¹ Formalised in law 2005-019 of 17th October 2005, determining the principles governing the status of lands and in Law n °2006-031 du 24 novembre 2006 determining the legal regime of untitled land private property

This article is based on information relative to 17 agribusiness projects and extended case studies on 6 projects (see Table 1). It draws on ethnographic material (about two hundred in-depth and repeated interviews with employees from public institutions, regional or local governments and traditional authorities, private developers, local land users, and other key informants). The interviews were conducted between March 2010 and September 2011 by the authors of this paper in the framework of the Malagasy Land Observatory activities.

[Table 1]

The article opens with a presentation of the legal framework that enables state institutions to control land access and to regulate large land deals. In the following section, it deciphers the process by which investors attempt to gain access in contexts of overlapping land rights. It then analyses how and why the central, regional and local governments seek to ease investors' efforts at obtaining land use rights. It also looks at how their competition to control land access contributes to slowing down the legalisation of investors' land claims. In the final section, it exposes how local landholders attempt to defend their land access. In the conclusion, it discusses the role of law –in particular the ongoing land reform - authorities and civil society relative to land management and to the protection of local land rights.

II SITUATION OF LEGAL AND INSTITUTIONAL PLURALISM

In Madagascar, investment projects and land access are governed by a number of different laws and institutions.

To promote investment and ease land access in agricultural and mining sector, the Ravalomanana regime (2002-2009) created a “one-stop office” for investors in 2006 (the Economic Development Board of Madagascar, EDBM). It also enacted an investment law in 2008 giving competences to the EDBM to deliver “authorizations of land acquisition” for foreigners². For agricultural investment in particular, the Ministry of Agriculture encouraged the regional governments to create “Agricultural Investment Areas” (AIA) to enhance country planning and reduce the red tape for investors³. In line with environmental decree⁴, all agricultural investments exceeding an area of 1 000 hectares has also to get an environmental

² Law n° 2007-036 of 14th January 2008.

³ Although some of these zones are identified they are not legally formalized.

⁴ Decree to Make Investments Compatible with the Environment (Decree MECIE, N° 99-954 of December 15, 1999, modified by Decree N° 2004-167).

permit, delivered by the National Office for Environment provided that negative impacts are minimized, notably on land uses issues.

Besides these laws for investors, the Ravalomanana regime, with the support of various international development agencies, launched a new land reform that is still in effect today (e.g. Teyssier et al., 2009). Passed in 2005 and 2006, these new land laws established that land that was untitled but occupied was no longer the property of the state but were ‘untitled private property’ (UPP). Thus, on occupied land the “presumption of state property” was replaced by a presumption of private property. Moreover, this change was accompanied by a decentralisation of land competences. Local governments (municipalities), provided they have a local land registry office, can legally recognize local/customary property rights (on UPP) and issue individual or collective land certificates. Thus, two state authorities can manage land issues and validate legal property: the state land services by delivering land titles, and the local governments by issuing land certificates⁵.

Consequently, the state, through the state land services, can only lease or sell state-owned land to investors. State-owned land has been drastically reduced. It now amounts to: a) land titled in the name of the state and b) un-titled and unoccupied land. The state can neither lease nor sell land that includes or encroaches upon titled private property or upon occupied land (UPP), whether or not formalized by a certificate.

All these new laws or bills (investment law, land laws, IAA, environmental decree) do provide a regulatory framework for large-scale land acquisitions and for local land rights protection. They also enable multiply the number of state institutions that can claim control over land access. (EDBM, the Ministry of Agriculture and the regional government, the central state through the land services, the municipality through the local land office). . However, these powers to grant land access rights are not clearly delineated between these various authorities. While making procedures confusing, these laws therefore provide investors with multiple institutional ways to negotiate land access and they open the way for potential struggle for authority among state institutions (Ballet et al. 2011).

It goes without saying that these laws do not operate in a vacuum but, to paraphrase Griffiths (1992), in a social field that is governed by laws, rules and convention of different origin and

⁵ Land right holders can choose the means of formalising their rights: title deed or certificate; both conferring similar legal property rights but the second being 50 times less expensive -10 USD instead of 507 USD- and 6 times quicker to obtain --on average 12 months instead of 6 years (ECR 2008; Malagasy Land Observatory, 2011). In October 2011, 400 Malagasy municipalities, or one-fourth of the total number, had set up land registry offices. These have delivered approximately 60,000 certificates in about four years, while, over the same period, the State land services have delivered an average of 1,500 land titles per year (www.observatoire-foncier.mg).

that generates its own rule of the game. In addition to these state authorities, different local/customary institutions operate at local level to legitimise, even formalise, different bundles of rights (descendants of royal families, elders, village chiefs, who sometimes formalise some local land rights through written documents called “little documents”). They can also claim control over land access (whether on state or non-state legal grounds) and impact on investors' land claims.

Moreover, none of these positive-laws are self-implementing, as was made clear by the Daewoo case. Indeed, first negotiations with Daewoo totally left aside the presumption of private property and were about to illegally transfer land to the Korean enterprise on already occupied land (RocheGude, 2011). The objective of the following sections is to analyse the “social working of rules” (Griffiths, 1992) in the three processes of gaining, controlling and maintaining land access.

III ROUTES FOR GAINING ACCESS TO LAND

INTEREST IN LAND REMAINS

Between 2005 and 2010, approximately 50 agribusiness projects covering surfaces above 1000 hectares were listed as starting or ongoing (Andrianirina Ratsialonana et al., 2011). An aggregate total of nearly 3,000,000 ha of land were targeted (the equivalent of the actual agricultural area cultivated by the 2.5 million family farms) (Figure 1). Following the well-publicised abandonment of Daewoo's huge agricultural project, two-thirds of these investments did not materialize mostly because of the world financial crisis (e.g. World Bank, 2010) and of the February 2009 *coup d'Etat* which opened the still ongoing national political crisis in Madagascar⁶. Nevertheless, about 15 companies are still active and new ones are coming (

Figure 2Figure 1). Although some food projects are starting (maïs, peanut), biofuel based on cane and above all jatropha, for domestic and international markets, is still the main objective (Andrianirina Ratsialonana et al., 2011; WWF-PNUD-PAD, 2012). Contrary to what is being

⁶ See Randrianja (dir.), (2012).

seen in many developing country, these investors are not large international companies or sovereign funds or new land grabbers coming from Asia⁷ but mostly medium European or small private companies. They are almost exclusively foreigners, with little experience of the agricultural sector and, often, with no experience in Madagascar. Although the seed money is limited, they are mainly funded or they hope to be funded by foreign investment—for the most part from European origins. They plan to develop large-scale plantations (from 5 000 to 100 000 ha) based on mechanisation and on a wage system. Considering the land as state-owned land, most of them hope to get a 50-year or a 99-year lease (*emphyteutic lease*) from the state).

[Figure 1 &

Figure 2]

FORMAL AND INFORMAL ROUTES TO NEGOTIATE LAND ACCESS

The investors' processes of gaining access to land partly show the distance that exists between law and practice. Until now, no investor has obtained a legal land lease from the state.

The majority of current agricultural investors has simultaneously engaged in two parallel routes to negotiate land access: the informal one and the formal one. These choices did not appear to be anchored, to rephrase von Benda-Beckmann (1981), in forum shopping strategies. Investors adopted the most convenient route with regard to their short term objectives (obtain a legal contract to convince the financial backers, start plantations to attract new financial backers).

Very few operators started formal legal requests for land access upon arrival and they did so only when their financial backers demanded it (banks, shareholders). Four of them started procedures before the 2009 crisis and managed in about 2 years to get close to the finalization of a 99-year lease but they finally withdrew their project due to insufficient funding (NEO, Delta,

⁷ E.g. Daniel and Mittal (2010) and World Bank (2010).

Delta, Unitech and GreenCO – see table in annex). The other operators have delayed or suspended the legal procedure due to the instability of the political context and lack of funding. By now (2012), one third of the ongoing projects (8) have effectively started the legal procedure but they have not finalized. Hence, although some have already been in Madagascar for 5 years now, none of them has yet obtained a legal land lease with the state. For example, in the agrodiesel sector, 28 investments were planned and 23 effectively started developing crops on a few hundred hectares. By now (2012), 11 are still ongoing but only one has obtained a lease contract and he has established it with a private landowner (

Figure 3). Besides, legal obligations such as the conduct of the environmental impact assessment are not being carried out. In the agrodiesel sector, only two of them have obtained an environmental permit.

In fact, quasi-all operators gave priority to local negotiations to implement a bottom-up approach but, above all, to carry out, without delay, trial and show-case plantations in order to attract new funding and to obtain extra funding to engage large-scale projects. Hence they got informal agreement from the local mayors or, in some case, with the regional governments – all these agreements being made informally and generally staying unknown from the central government and the central state land administration. In addition, new investors try now to obtain lease contract with private landowners or to employ Malagasy broker to ask land on their name (e.g. Clayton et al., 2011).

[

Figure 3]

To sum up, agribusiness investors in Madagascar either engage both in formal and informal procedures or restrict themselves to establishing informal land agreements. But, in a context characterised by a complex overlapping of land rights, neither of these two routes seem to ensure the respect of local landholders' rights nor the effective protection of investors' land rights. Aware of the complex route to get a legal land lease, investors try to delay the long administrative and costly procedures.

IV. LEGAL PROCEDURE: COMPETITION AMONG STATE INSTITUTIONS FOR CONTROL OVER LAND ACCESS

SMOOTHING FIRST LAND ACCESS

Central, regional and local governments as well as non-state actors generally offer a warm welcome to investors and help them access land in the hope to capture material and symbolic resources offered by the agribusiness project. A first agreement to access land is easily obtained in exchange of promises of financial and material advantages.

For land purchases and leases, state land services require that claimants obtain various authorisations and comply with several steps in order to verify that the targeted land is neither titled (whether in the name of private landowners or of the state) nor occupied. Yet, in the 6 cases studied (e.g. Burnod et al., 2011b for more details), legal procedure allows neither the identification nor the respect of land rights, even of those duly recognized by positive laws.

First fieldwork missions revealed that some of the land about to be registered in the name of the State for the purpose of transfers to agribusiness investors was encroaching upon: (i) non titled but occupied land protected by the 2005 land law; (ii) areas managed by local associations through legal contract legalizing their use rights (natural resources management contract signed by the association, the Ministry in charge of forests and the municipalities according to GELOSE law⁸) and (iii) even, titled land in the name of private land owners.

As experts have noted, new legal regulations are not a sufficient condition to allow for the effective protection of local land rights (Vermeulen and Cotula, 2010). Low enforcement of land law results from technical difficulties due to large land areas. It also results from unawareness or wilful ignorance of law, and the fact that both land administration services and local land users still conceive untitled land as stated-owned. In one case, interviews with two local customary power-holder leaders revealed that the “consultation” procedure was understood as the formalisation of a decision already taken by the state and that targeted land, although subject to uses, was understood to be owned by the state. As such, the investor’s land access was impossible to circumvent or, at least, could not be opposed in front of the state officials from urban centres.

Low enforcement of land laws results above all from the wish to see the project develop and, hence, from a certain commoditization of authority over land access. During legal procedure process, some consultations are effectively done on the field but they only involve a few

⁸ Law n°96-025 du 30 septembre 1996, regulating local management of natural resources.

power-holders and officials (regional government, mayors, some village leaders and some local landowners). Land services agents and those power-holders respectively ease and agree to the investors' land access claims because they are respectively paid for their services (often on an illegal basis) or they are confident of enjoying counterparts: priority access for locals to jobs, construction of schools, wells or community clinics, payment of land fees - even if the compensation commitments are not legally binding (e.g. Cotula et al., 2010).

CONTROLLING LAND ACCESS

For these very reasons, the arrival of investors encourages competition among state institutions. If the different land laws are not strictly enforced on the fields they offer the state institutions grounds to claim authority over land control. In addition to the potential for rent (Lavigne Delville, 1998), land control is used as a vehicle to enhance the authorities' own visibility and influence (Sikor and Lund, 2009).

This competition over land control appears first between the central state institutions and the regional/local ones. Despite initial opposition to foreign large-scale land acquisitions, the new regime strongly promotes the building of new economic partnerships with foreign actors. The Daewoo case and the large-scale land acquisition issue were therefore arguably more a case of political rhetoric to destabilise the former president than a definitive opposition to international land deals (Evers et al., 2011). Nevertheless, the new regime, conscious of the reluctance of the Malagasy population towards transfers of land to foreigners, also implemented via the Ministry of Country Planning a new *circulaire* designed to regulate the procedure for large-scale land acquisitions⁹. Investors are strongly encouraged to favour land lease over outright purchase and required to obtain an official approbation before engaging in procedures to access land (by a commission composed of representatives of the concerned ministries for projects involving more than 250 ha, by the Council of Ministers for those above 2 500 ha). The *circulaire* also reduced the lease duration down to thirty years (instead of 50 or 99 years) and multiplied by ten the land rents (20 000 Ariary/ha, i.e. about 10USD/ha).

The objective seems to be to recentralize control over these land deals and to recall the authority of the central administration to regional and local leaders and clerks who negotiated

⁹ «A *circulaire* is a letter of instruction from the government to the administration. Circulaire 321-10/MATD/SG/DGSF, « Instructions concernant la procédure à suivre en matière de demande de terrain de grande superficie », 10/25/2011”.

land deals without the agreement of their hierarchical superiors. Indeed, it was revealed that the previous central government only had information on a third of the fifty projects underway (our data, March 2010). The objective is also to exercise a tighter control on the financial resources associated to land deals. This “re-centralization” process does not fit with the larger process of land management decentralization induced by the land reform. It also goes along with the perception and practices, widespread among decision-makers and clerks according to which the state is still the eminent owner of most of the national territory despite the 2005 land laws. It then exemplified the difficulty for the central state, operating both as “owner” and “institution deciding who gets benefits”, to decentralize land management when opportunities for rent seeking by state institution – or state officials – are important (Sikor and Lund, 2009).

The implementation of these new instructions forced some investors to renew the legal procedure they had already started (as now, there is a legal obligation to obtain permission from the central land administration before starting land prospection). It also forced them to present a business plan and to start in parallel the procedure to get an environmental permit. But it also lengthens the procedure and offer opportunities for some state representative to ask for counterparts.

Competition within the different spheres of the state over land control is not limited to the relation between local, regional and central governments. Field study also revealed that it could divide different services within the state administration, each legitimizing their position on different positive laws. In the North-West of the country, the delimitation of a 20 000 ha area for an investor sparked a conflict between the state land services and the state Forestry services, the latter demanding a new delimitation to avoid the encroachment of the requested land on forest areas – partly managed by local association. This problem has strongly slowed down the investor’s land access.

Large-scale land acquisitions have also shown to fuel tensions between regional and local governments. Both heads of region and the mayors can at times consider themselves as being in charge of the management of the territory. In two land deals, these actors have respectively helped different investors and made overlapping informal allocations to them (in the Northern part of the island, two investors (Renew and LTB investments) wanted to lease respectively 30 000 and 20 000 hectares and they realized that their demand encroached on each other). These zones of disputed entitlement prove that, at the regional level, the land fitting all the favourable investment criteria is not as extensive as was forecasted by the regional or local

state representatives. This problem has also strongly slowed down the investors' legal land procedures.

SLOWING DOWN LEGAL LAND ACCESS

Hence, the competition over control of access to land hinders the investor's land access and tends to increase legal procedure costs. Investors, attracted by the announced low price of the rents, did not properly assess all the transactions costs to access land (several appointments with the state's land office, costs to obtain the formal document, funding of all state agents fieldwork, registration costs and bribery). Added to the funding problems that investors may have already been facing, these costs and obstacles, have contributed to some abandonments of projects. Hence the administrative procedure contributes to an informal selective process, pushing back the less capital-endowed investors but selecting also the ones with the stronger networks to overcome the administrative obstacles – criteria which differ from those seeking sustainable investments...

CONTRIBUTING TO LAND INSECURITY

Busy welcoming investors or competing for control over access to land, these various institutions have generally pushed local landholders' claims into the background. In this competition for authority, the voices and interests of the local users appeared more as a pretext than as a real purpose. Land tenure insecurity does not result here from tensions between laws or jurisdictions but from tensions among land authorities which enforce these laws (e.g. Muttenger, 2010). Some registrations of the land in the name of the state deny the local land rights, despite the fact that they are duly protected by state laws. Even if investors withdraw their projects and do not expulse local inhabitants, the legal registration in the name of the state transform former (legal) landowners into squatters.

V. INFORMAL NEGOTIATION: COMPETITION OVER USE AND PROPERTY RIGHTS ON LAND

A FIRST POSITIVE WELCOME

Most investors only negotiate with what, for them, are the “most visible” institutions, i.e. positive law institutions (central, regional and local governments). All interviewed investors had introduced their project to at least one main representative of the regional government and

to the mayor(s) of the concerned municipality(ies). Generally, they opt – at least in a first phase - for the establishment of informal land contracts with those state authorities and, mainly, with the mayors.

External interventions in developing countries often take the paradigmatic form of a ‘development project’ (Bierschenk et al., 2000; Moose, 2005; Le Meur and Hochet, 2010). Our investigations in Madagascar seem to confirm this observation. From the interviewed mayors’ point of view (6 cases - NewProd, ITO, Biovision, Green-M, N-Fuel, CoCas), agribusiness projects are more or less similar to development projects. It is a means to compensate for the deficiencies of the welfare state as they hope to get, in addition to jobs creation, the improvement of roads, the construction of wells, schools or health centres. Likewise, albeit tacitly, investors who want to settle in a locality must contribute to the development of the area and most of those visited had established social infrastructures even before the agricultural project had been properly launched (school, health centre, wells). This is what was explained to us by one of the interviewed mayor:

«Why are we giving our land to project ITO? The Malagasy state doesn't even look at our village whereas we have lots of concrete advantages thanks to ITO. It pays land fees and that strongly increases the budget of my local government. Several times I asked the Minister: we need schools, we need hospitals. But they haven't done it. But on the contrary, ITO did a lot. They built a school, they are paying for a teacher, and there already are 30 pupils. They also support a local association». A Mayor, North West Region – ITO investment (see table 1).

Welcoming an agribusiness project is also a means for mayors to improve their small annual budget - between 5000 and 12 000 USD in average. In the ITO case, the payment of 1 USD per hectare on 5 000 ha has contributed to a 150% increase in the budget of the concerned local government.

In the same way as brokers (e.g. Bierschenk et al., 2000; Moose, 2005), the interviewed mayors assume the mediation between the investor's team and the local population. They organize the consultation with the village leaders and local populations. They often claim a genuine will to enhance the well-being of the local society as a whole, even if, in reality, they have a clear political agenda and notably, consider the pastures as less valuable than the agribusiness project. This position was made particularly salient in interviews with two different mayors:

“I know that these tanety are pastures but I'd rather have 5000 jobs for all the people than 5000 cows for few rich cattle breeders”; Mayor – ITO project (see table 1) – March 2011.

“We have an opportunity for development; we cannot refuse the project just to protect pastures”
Mayor – Quality crops (see table 1) March 2011.

Some of them seek to find trade-offs between the investors and the different interest groups through compensation mechanisms such as the payment of land rents, wells, fodder in exchange of land use... Indeed, among those village leaders and village people consulted, some approved the projects without properly knowing the size and location of the targeted area because they hoped to enjoy material advantages (jobs, pastures, rent). However, mayors did not necessarily improve communication between the developers and the local population. These expectations contribute to explaining the discrepancy - in a first phase - between the potential risks associated with large-scale land operations and the weak reactions to them (for a presentation of all other factors see Evers et al., 2011).

MAINTAINING ACCESS

The defence of land access takes different forms according to the resources at the disposal of local landholders' and to the forum in which land access is negotiated (Ribot et Peluso, 2003). Some local land users are likely to believe that the sole alternative to defend their rights is to resort to violence against the investors (burning plantations) or against the institution/groups who have granted access to the investor.

In the ITO case, the extension of plantations generated tensions between the investor and local groups and created violent divisions among local communities. Little after plantations were extended indeed, the area witnessed outbreaks of violence between the *betsileo* villages, settled in the locality since two generations, and *sakalava*¹⁰ villages, first occupants of this same locality. The investors had done consultations, but these had restricted to those two village leaders and population who lived close to the targeted land – which were *Betsileo* villages. Those leaders, as well as most of the consulted inhabitants, welcomed the company as they hoped that the plantations would offer a natural barrier against the *sakalava*'s cattle that regularly damages their crops (Merderach, 2012). Some were also hoping that they could extend their crops in the low land not used by the investors, these areas being non suitable for *jatropha* but suitable for rice. The rich investor being seen as more powerful than the *sakalava* herders using the pastures, they indeed saw his land claims as an opportunity to

¹⁰ *Betsileo* are one socio-cultural group of Madagascar. Their historical territory is located in center part of the island, known for the complexity of the irrigation systems and the practice to grow rice. Lots of them migrate to other regions. In the studied region, they initially came to work in the southern neighbourhood, one of the biggest area of irrigated rice production. *Sakalava* are another socio-cultural group of Madagascar. Their historical territory is located in the western part of the island, known for cattle breeding.

appropriate new lands. Moreover, they accepted the project without really being aware neither of the duration, nor of the size and location of the area requested by the project – as the developers themselves did not even really know.

The *sakalava* villagers, and particularly the village heads, who considered themselves as the ancestral landowners, were, for their part, not consulted by the private investors. They were located far from the concerned tracks of land but they effectively decide over their management and use them as pastures. Few months after the expansion of the *jatropha* plantations on the pastures, a gang armed with guns stormed the village of the head of *fokontany* (smallest administrative unit in Madagascar), shot him off in the legs, stole the administrative stamp, burnt his house and those of his neighbours and killed some cows in the village. All the villagers suspect the *Sakalava* village leaders of having organized the operation. Stealing the administrative stamp is arguably a means of contesting the power of the head of *fokontany*, burning his house or destroying all documents relative to cattle or land transactions, killing rather than stealing the cattle or threatening all the villagers. Some assumed that it was a way to reassert their authority on land and to strongly contest the fact that the *Betsileo* villagers and their leader gave the land away to the investors. Illicit mechanisms, such as violence and threat, can indeed represent alternative and effective ways of controlling or maintaining land access (Ribot and Peluso, 2003). This violent attack, not directly targeted at the investor, as he is considered rich and able to mobilize the police or to resort to the justice to protect its interest, sought to remind the *Betsileo* that they only have use rights and not the full bundle of property rights.

MAINTAINING LAND INSECURITY

Tensions and conflicts can help to understand the functioning of land arenas and to identify who are the relevant authorities and rules from the actors' point of view (Roberts, 1994; Chauveau et Mathieu, 1998; Lund, 2001). This ITO case illustrates that some of the local authorities who control land access can be “invisible” in the eyes of the investors and not really taken in account (or intentionally bypassed) by state institutions. Conflicts are then a mode of contesting or maintaining access to resources and of reasserting control on land access and, more generally, of trying to become more “visible” and to reassert their power (e.g. Le Meur, 2006; Ribot et Peluso, 2003 ; Sikor et Lund, 2009). To rephrase Hirschman analytical scheme (1970): if stakeholders cannot voice their protest in fora (voice option),

they can act and burn the plantations down (exit option). But in a more implicit perspective, these violent acts can also be, in addition to manifestations of social cleavages and diverging interests, modes of communication (Le Meur et al., 2006). In the ITO case, the people targeted were those who had negotiated with the investor and who had granted him rights – in disrespect of the fact that they were not the first settlers and only had secondary rights.

These tensions and conflicts are present in several areas targeted by investors. They foreshadow that the investors, who are currently still negotiating land access in the local arena, may encounter difficulties maintaining their land access in the future even if they do obtain formal land lease. Property is only property if socially legitimate institutions sanction it (Lund, 2002). Hence, in a context of institutional and normative pluralism, investors' use rights sanctioned by law and state institutions are insufficient to stabilize property relations and confer secure land rights for investors. As stated by a herder “official document do not protect neither against crop destruction by cattle nor against fire” (Medernach, 2012). Physical fencing being costly and inefficient on such large tracks of land, the risk is that investors will have to resort to force (armed security staff) to maintain their rights.

CONCLUSION

The Malagasy body of state rules, despite its ambiguities, does provide a regulatory framework for large-scale land acquisitions and for local land rights protection. Nonetheless, in our case studies, neither central, regional or local governments nor state services were enforcing the 2005 land law protecting local landholders' rights. They all have an interest in claiming that the land is state owned in order to maintain their power in terms of management, tax perception, demand of compensation and rent-seeking. This is compounded by the fact that the 2005 land law is not effectively used by landholders to claim their rights. Another law or a code of conduct cannot be the sole way to regulate investors' land access. Moreover, other means and actors are needed to favour a more effective enforcement of law.

The entry of investors in the land arena induces legislation change (new procedure implemented to regulate large-scale acquisitions). It also generates tensions among institutions and contributes to the process of state formation. It also gives institutions opportunities to consolidate or enhance their authority (e.g. Sikor and Lund, 2009). But, in those processes of gaining access and competing over control on land access, little room is

left for debate and for the expression of the diverse positions of the various local landholders; hence, reasserting control over land is done violently.

The issue is not only to recognize local land rights but also to take local landholders' power over land control into account. Deep and long negotiation between investors, local authorities and local groups but also between local authorities and local groups, and among local groups are necessary to know if local people do accept the investment and, in that event, manage to evaluate the investors' counterparts. All negotiations are influenced by asymmetrical information and power struggles. Nevertheless, these latter being ineluctable, these power and information asymmetries can be reduced through the use of legal tools and the pursuit of legal empowerment (certificates, local land offices, law advisers). Most of all, it requires that information and interactive exchange on land tenure is increased and benefits all stakeholders (thanks to local land offices, observatories, civil society organisations, public institutions, research institutes, and experts). For sure, these negotiations can be time consuming and costly but they can offer the enterprise a first social recognition and avoid the expression of conflicts. These efforts thus need to receive political support but need also to be articulated on reflections on how to finance the tools and information to ease the negotiations.

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ILLUSTRATIONS

Figure 1 : Evolution of area (ha) targeted or cultivated by investors [2005- 2012]

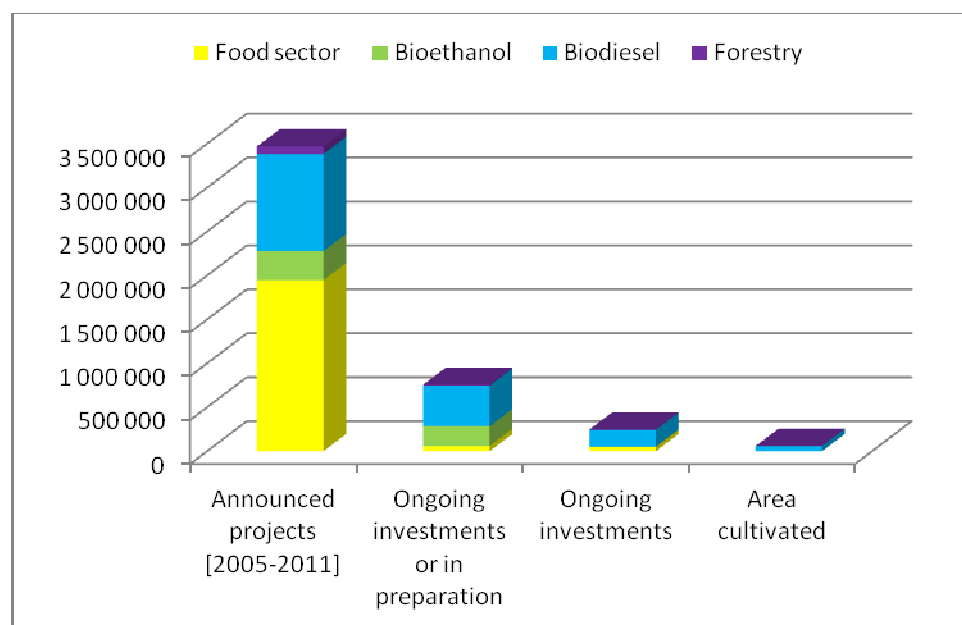


Figure 2 : Evolution of number of investments [2005- 2012]

Secteur	Stopped	Ongoing	Preparing	No information	Total
Food	8	6	2	2	18
Biofuel (jatropha)	16	8	3	1	28
Biofuel (sugar cane)	7	-	9	2	18
Forestry	4	1	1	-	6
Total	35	15	15	5	70
%	50%	21%	21%	7%	

Sources : nos données et WWF-PNUD-PAD, 2012.

Figure 3 : Procedures engaged by investors in the biodiesel sector [2005- 2012]

Biodiesel sector Land access	Final negotiation land lease	Legal procedure	Regional arrangement	Local negotiation	Contrat privé	No info	Prospection	Total
all projects [2005-2011]	2	5	4	7	2	3	5	28
on going & preparation	0	3	0	4	1	0	3	11

Biodiesel sector	Environmental permit obtained	Environmental permit started
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all projects [2005-2011]	1	2
ongoing & in preparation projects	0	2

Biodiesel sector	Start cultivation	No plantation
all projects [2005-2011]	18	10
ongoing & in preparation projects	9	2

Table 1 : List of projects analysed in this research

Sector	Company	Status	Origin	Region	Area envisioned (hectares)	Area cultivated	Market	First contact	Informal access or contract with	Legal procedure
Food	Hopy	Ongoing	Asia	North-West	5 000	1000	Local & export	Regional	Regional Gov.	Unclear
Food	Qualitycrop	Ongoing	Europe	North-West	20 000	250	Local	Regional	Local Gov.	Ongoing
Biofuel	NewProd	Ongoing	Europe	North-West	10 000	300	Local	Private	Private owner	Planned
Biofuel	Alterfuel	Ongoing	Europe	North-West	10 000	100	Local	Local	Local Gov.	Planned
Biofuel	Biovision	Ongoing	Europe	North	20 000	300	Local & Export	Local	Local Gov.	Ongoing
Biofuel	N-Fuel	Ongoing	Europe	North-West	30 000	300	Local	Local	Local Gov.	Started
Biofuel	ITO	Ongoing	Europe	South- East	80 000	30	?	?	Local Gov.	Started
Biofuel	CoCas	Ongoing	Asia	North-West	5 000	80	?	Regional	Regional Gov.	Started
Food	Daewoo	Stopped	Asia	North	1 300 000	0	Export	National	None	Started but stopped
Food	Varun	Stopped	Asia	North	230 000	0	Local & export	Local	Associations	None
Food	Pro2	Stopped	Europe	North	150 000	0	Export	Local	Only prospection	-
Food	Madabeef	Stopped	Europe	West	200 000	0	Export	EDBM	Only prospection	-
Biofuel	Logos	Stopped	Europe	West	30 000	10	Export	Regional	Local Gov.	Started but stopped
Biofuel	Sun Energy	Stopped	Mid-East	North-West	30 000	600	Export	Regional	Regional Gov.	Started but stopped
Biofuel	Green-M	Stopped	Europe	South -East	50 000	20 000	Export	Regional	Local Gov.	None
Biofuel	LTB	Stopped	Pacific	North	120 000	300	Export	Local	Local Gov.	Started but stopped
Food	TNT	Stopped	Africa	East	?	-	Export	National	Only prospection	X

Gov. = government